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June 9, 1999

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VIA FEDERAL EXPRESS

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

Re: Skinner Landfill

Dear Ms. Estes:

As you may be aware, Newberry Construction Company entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing settlement of Plaintiff's claims regarding the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between Newberry Construction Company and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is Newberry Construction Company's understanding that EPA, Region V has now determined what information it will order to determine that Newberry Construction Company qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

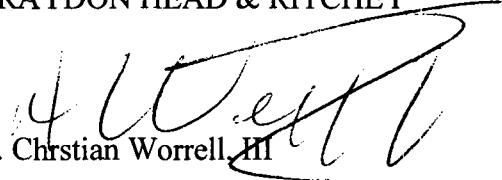
Sherry Estes, Esq.
May 27, 1999
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Accordingly, I am enclosing the information requested by EPA for Newberry Construction Company. I believe that this information amply demonstrates that Newberry Construction Company is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. Newberry Construction Company understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by Newberry Construction Company in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Newberry Construction Company does not acknowledge any liability for response costs at the Skinner Site. Furthermore, as we have previously discussed, you have indicated that Newberry Construction Company and the other settling de minimis defendants need not otherwise respond to the Special Notice letters previously issued by EPA.

In order to ensure that Newberry Construction Company is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, Newberry Construction Company strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 1229(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,

GRAYDON HEAD & RITCHEY



A. Christian Worrell, III

ACW/kaw

cc: Newberry Construction Company

Newberry Construction Company

Settlement Amount: \$33,161.42

Excerpt from Allocator's Preliminary Report :

Newberry's only facility in the area is at 10070 Windisch Road, West Chester, OH. It has been occupied by the company since approximately 1974. The company is in the business of railroad track construction, maintenance and repair. Newberry had prior facilities at 2565 West Galbraith Road, Cincinnati from 1960 - 1974 and at 1728 Powers Street, Cincinnati from 1928 - 1960.

Newberry transported used railroad ties, and possibly some metal "frogs" and trees, concrete and rocks to the Skinner Landfill. The ties were generated when Newberry Construction performed repairs and similar service on rail line and sidings at a customer's facilities. Newberry stated that many railroad ties transported to the Site were used for landscaping at the Site or were removed from the Site for landscaping purposes elsewhere. Newberry stated that the "old railroad ties, did not create or contribute to the release of hazardous substances" at the Site. "In addition, the fact that many if not most of the ties were not placed in the landfill should be considered" in the allocation, Newberry argued.

Several witnesses talked about Newberry. Gene Crow said he saw Newberry Construction bring in railroad ties on a dump truck two or three times over a seven to eight year time period in the late 1950s and early 1960s. Lloyd Gregory also described the disposal of railroad ties, spikes and tie plates several times with Newberry using a flat bed truck. Elsa Skinner said that at one time Newberry brought railroad ties to the Site at least once a month. She said that the ties were sometimes used to partition off areas.

Ray Skinner said that Newberry hauled ties, but also broken rails, switches, lights, signs, signal gates, cross ties and switch ties. He estimated the disposal of two loads per week in the 1980s and some time before then. The ties were soaked in creosote. He thought that 90% of the ties were disposed of in the Landfill. Ray Skinner Depo., p. 201-207.

Rodney Miller estimated that he saw Newberry bringing in 5-6 cy loads of railroad ties over 200 times in the 1980s. He also described the ties as dark brown, and his educated guess was that they had been covered with creosote. He said that some of the ties were given away or sold but that this amount was minimal in comparison to the number of ties disposed of in the Landfill.

Waste-in Amount. Newberry said that each load of wooden railroad ties consisted of approximately 40 - 50 ties weighing about 7,000 - 8,000 lbs with a volume of about 5 cy for each truckload. Newberry wrote that it "does not have any information, documentation or knowledge upon which to determine the total quantity of railroad ties transported to the Site," but then said that it believed that fewer than 100 truckloads were taken to the Site for a maximum total volume of 700,000 - 800,000 lbs. [350 - 400 tons] or 500 cubic yards.

Rodney Miller estimated 200 loads that he personally saw. Ray Skinner's testimony would represent about 100 loads per year for more than 8 years, if interpreted literally. Newberry Construction appears in the Skinner log in 1977-79 as follows:

September 2, 1977	\$ 126
September 11, 1978	\$ 511
June 5, 1979	\$ 287
July 9, 1979	\$ 161
September 21, 1979	\$ 422
November 12, 1979	<u>\$ 257</u>
Total	\$1,764

Newberry estimated that it was charged \$15-20 per load. At the midpoint in this range, \$17.50, \$1,764 represents 100.8 loads. I am assuming that Newberry's estimate of 100 loads was derived in this manner and was intended to cover only the 1977-79 time period.

Based on efforts to decipher the log entries, I have decided to treat these log entries as representing \$15 per load (the low end of Newberry's estimate) or 118 loads. I will use Newberry's estimate of 5 cys per load, for a total of 590 cys. I am going to accept Rodney Miller's testimony, insofar as it represents site usage, but pare the frequency to 100 from 200 because his observations overlap the documentary time period. Mr. Miller's testimony thus represents another 500 cys. I am treating Gene Crow's testimony as representing 15 cys and have decided to credit Ray Skinner's testimony somewhat by translating it into 10 loads per year for a 10 year time period, or 500 additional cys. These amounts total 1,605 cys. I have further decided to reduce this amount by 10% to cover the testimony on the amount of ties actually disposed of at the Landfill. Newberry's waste-in amount, therefore, is 1,445 cys.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem-Dyne	Total
NEWBERRY CONSTRUCTION COMPANY	1445	0	372906	0.3874%	262252	0.0000%	0.04%	0.00%			0.03874%